
Rules of

Department of Mental Health

Division 25—Fiscal Management

Chapter 2—Purchase of Service Contracting

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Title 9—DEPARTMENT OF MENTAL HEALTH

Division 25—Fiscal Management Chapter 2—Purchase of Service Contracting

9 CSR 25-2.005 Definitions

PURPOSE: This rule defines the terms used in this chapter.

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. Therefore, the material which is so incorporated is on file with the agency who filed this rule, and with the Office of the Secretary of State. Any interested person may view this material at either agency's headquarters or the same will be made available at the Office of the Secretary of State at a cost not to exceed actual cost of copy reproduction. The entire text of the rule is printed here. This note refers only to the incorporated by reference material.

(1) The terms defined in section 630.005, RSMo are incorporated by reference for use in this chapter as though set out in this rule unless those terms have been redefined under section (2) as for purposes of this rule.

(2) Unless the context clearly requires otherwise, the following terms used in this chapter shall mean:

(A) Affiliated community service provider, an entity so designated by the Department of Mental Health—1) to provide, directly or by purchase from community providers, for clients of the Division of Mental Retardation and Developmental Disabilities a comprehensive array of services or for a comprehensive array of services for clients of the Division of Comprehensive Psychiatric Services under Chapter 632, RSMo or 2) to provide community support program services to clients referred by a Department of Mental Health facility. Affiliated community service providers are independent contractors providing an array of services for clients of the Divisions of Comprehensive Psychiatric Services or Mental Retardation and Developmental Disabilities;

(B) Award, the presentation by the department of a contractual agreement to an offeror selected after responding to a request for a proposal (RFP) as set out in this chapter;

(C) Community support program, an array of supportive services provided to assist clients of the department living in generic

housing or an array of specialized services provided to enable a client of the department to live in community residential programs;

(D) Competitive evaluation, the process set out in this chapter where the department evaluates completed proposals from responsive offerors to determine the best proposal(s) for the Department of Mental Health. Multiple contracts may be awarded in the best interest of the department;

(E) Comprehensive array of services, for the Division of Comprehensive Psychiatric Services, it is the capacity of an agency to provide services, including mental health evaluation and assessment services, individual and group therapies, day treatment, medical services, administrative coordination, case management, information and education services and general access to or provision of inpatient care on both a scheduled and twenty-four (24)-hour-a-day basis; for the Division of Mental Retardation and Developmental Disabilities, it is the capacity of an agency to provide services including, but not limited to, assessment services, counseling, respite care, recreation, habilitation, training, vocational rehabilitation, residential care, home-maker services, developmental day care, sheltered workshops, referral to appropriate services, placement and transportation;

(F) Contractual agreement, the document executed by a department official and the offeror selected as set out in this chapter to provide certain services to certain clients in a certain geographic area;

(G) Department, the Department of Mental Health and its Divisions of Comprehensive Psychiatric Services, Mental Retardation and Developmental Disabilities, Alcohol and Drug Abuse and the department's designated staff;

(H) Multiple award, a contract awarded to two (2) or more offerors for services required to meet the needs of the department;

(I) Noncompetitive negotiation, the non-competitive procedure where the department establishes contracts with eligible service providers through direct negotiation, and a contract(s) is awarded in accordance with the fiscal and programmatic interests of the department.

(J) Nonresponsive proposal, an offeror whose proposal does not conform to the mandatory or essential requirements of an RFP;

(K) Offeror, a provider or potential provider submitting a proposal in response to an RFP;

(L) RFP, a request for a proposal developed by the department for solicitation of prospective offerors to provide certain services to clients according to certain criteria,

terms and conditions specified by the department;

(M) Responsive offeror, an offeror whose proposal does conform to the mandatory or essential requirements of the RFP; and

(N) Solicitation, the process of notifying prospective offerors that the department seeks proposals to purchase certain services for clients in a certain area.

(3) Singular terms include the plural and vice versa, unless the context clearly indicates otherwise.

AUTHORITY: sections 34.100 and 630.050, RSMo 2000 and 630.405, RSMo Supp. 2003. Original rule filed Oct. 16, 1986, effective July 13, 1987. Emergency amendment filed May 15, 1990, effective May 25, 1990, expired Sept. 21, 1990. Amended: Filed Aug. 1, 1990, effective Dec. 31, 1990. Emergency amendment filed July 7, 1992, effective July 17, 1992, expired Nov. 13, 1992. Amended: Filed July 7, 1992, effective Feb. 26, 1993. Amended: Filed June 30, 2003, effective Dec. 30, 2003.*

**Original authority: 34.100, RSMo 1945, amended 1983, 1995; 630.050, RSMo 1980, amended 1993, 1995; and 630.405, RSMo 1980, amended 1993, 1995, 2001.*

9 CSR 25-2.105 Purchasing Client Services

PURPOSE: This rule prescribes the procurement system for purchasing certain departmental services (other than in the department's community placement program) for departmental clients. As set out in sections 34.100 and 630.405, RSMo, the commissioner of administration shall have the power to delegate his/her authority to purchase services for clients from providers to the department. The delegation of authority requires the department to comply with the basic intent of public procurement procedures to purchase the services.

(1) As set out in sections 34.100 and 630.405, RSMo, the commissioner of administration has delegated his/her authority to the department to purchase services from providers directly rather than through the Division of Purchasing of the Office of Administration. The commissioner delegates the authority by letter to the department director on a year-to-year basis.

(2) The director may designate entities to be known as affiliated community service providers to provide psychiatric and developmental disabilities services as defined by Chapters 632 and 633, RSMo in a service



area or region where no state-operated facility exists in that region to provide these services. In so designating entities, the director may take into account, but shall not be limited to, the following: the ability of the entity to provide, subcontract or develop the necessary array of services, the stability of the entity as indicated by its historical service provision, the community-based nature of the service, the ability of the entity to utilize funding to maximize division-identified services to the greatest number of clients with quality and effective service.

(3) The noncompetitive negotiation procedure shall be used when the department director designates an affiliated community service provider.

(4) The noncompetitive negotiation procedure shall be used to establish contracts for the Division of Mental Retardation and Developmental Disabilities' Purchase of Service programs.

AUTHORITY: sections 34.100 and 630.050, RSMo 2000 and 630.405, RSMo Supp. 2003. Original rule filed Oct. 16, 1986, effective July 13, 1987. Emergency amendment filed May 15, 1990, effective May 25, 1990, expired Sept. 21, 1990. Amended: Filed Aug. 1, 1990, effective Dec. 31, 1990. Emergency amendment filed July 7, 1992, effective July 17, 1992, expired Nov. 13, 1992. Amended: Filed July 7, 1992, effective Feb. 26, 1993. Amended: Filed Oct. 31, 2000, effective May 30, 2001. Amended: Filed July 1, 2003, effective Dec. 30, 2003.*

**Original authority: 34.100, RSMo 1945, amended 1983, 1995; 630.050, RSMo 1980, amended 1993, 1995; and 630.405, RSMo 1980, amended 1993, 1995, 2001.*

9 CSR 25-2.205 Request for Proposal Development

(Rescinded December 30, 2003)

AUTHORITY: sections 34.100, 630.050 and 630.405, RSMo 1986. Original rule filed Oct. 16, 1986, effective July 13, 1987. Emergency amendment filed July 7, 1992, effective July 17, 1992, expired Nov. 13, 1992. Amended: Filed July 7, 1992, effective Feb. 26, 1993. Rescinded: Filed June 30, 2003, effective Dec. 30, 2003.

9 CSR 25-2.305 Request for Proposal Solicitation Procedures

PURPOSE: This rule prescribes department procedures for soliciting offerors in response to requests for a proposal.

(1) The department shall specify in each request for a proposal (RFP) the proposal closing time, date and place to provide offerors a reasonable time to prepare their proposals.

(2) The department shall post notices of the availability of the RFPs in the department's central office contracts unit. The department shall mail or otherwise distribute the RFPs or notices of the availability of the RFPs.

(A) If a purchase involves the estimated expenditure of more than twenty-five thousand dollars (\$25,000), the department shall advertise the notice of availability of the RFP in two (2) newspapers of general circulation in the geographic area where the services are to be provided or in places as are most likely to reach prospective sources.

(B) The department shall make a copy of each RFP available for public inspection at the department's central office contracts unit.

(3) The department may issue amendments for any modification(s) of the RFP. The department shall plainly mark any RFP amendment as such and shall reference the portions of the RFP it amends.

(4) Offerors may modify or withdraw proposals in writing in a notice to the department at the location designated in the RFP before the proposal closing time and date. The department shall keep any modification or withdrawal documentation in the RFP file.

(5) When the procurement requires the utilization of competitive evaluation, the formal RFP solicitation method should be utilized.

(A) Proposals should be received in a sealed container by the time set forth for the opening of the proposals.

(B) Proposals received after the time set forth for the opening of proposals shall be considered late and will not be opened.

(C) Under extraordinary circumstances, the department may authorize the opening of a late proposal. In such cases, the proposal must have been turned over to the physical control of an independent postal or courier service with promised delivery time prior to the time set forth for the opening of the proposals. All such decisions are at the sole discretion of the department. The following guidelines may be utilized to determine the criteria for an extraordinary circumstance:

1. State offices were closed due to inclement weather conditions;

2. Postal or courier services were delayed due to labor strikes or unforeseen "Acts of God"; and

3. Postal or courier service did not meet delivery time promised to the offeror. In such case, the offeror must provide written proof that the promised delivery time was prior to the time set forth for the opening of the proposals.

(D) Proposals received in response to an RFP shall not be available for public review until after a contract is executed or all proposals are rejected.

(6) The department shall keep records of each late proposal, modification(s) or withdrawal in the RFP file.

(7) The department shall open proposals and modifications publicly at the time and date as specified in the RFP.

(8) In the event the department receives a container which is not identifiable as a specific proposal, an authorized person within the department may open the container to determine its contents. If the contents are determined to be a proposal, the container will be resealed and the solicitation number, opening date, and time will be noted on the outside. The container will then be filed until the official time for opening.

(9) After the proposal opening, an offeror may be permitted to withdraw a proposal prior to award at the sole discretion of the department, if there is a verifiable error in the proposal, and enforcement of the proposal would impose an unconscionable hardship on the offeror. The withdrawal will be considered only after receipt of a written request and supporting documentation from the offeror. Withdrawal shall be the offeror's sole remedy for an error other than an obvious clerical error.

(10) If mistakes in proposals are discovered after the proposal closing time and date but before award, the following procedures shall apply. The department may allow the offeror to correct minor informalities which are matters of form rather than substance or insignificant mistakes correctable without unfair advantage to the offeror.

(11) The department shall issue a determination in writing granting or denying requests to modify or withdraw proposals because of a mistake.

(12) Contracts awarded as a result of a competitive solicitation may be amended when such an amendment is in the best interest of the department and does not significantly



alter the original intent or scope of the contract.

AUTHORITY: sections 34.100, 630.050, RSMo 2000 and 630.405, RSMo Supp. 2003.* Original rule filed Oct. 16, 1986, effective July 13, 1987. Emergency amendment filed July 7, 1992, effective July 17, 1992, expired Nov. 13, 1992. Amended: Filed July 7, 1992, effective Feb. 26, 1993. Amended: Filed Oct. 31, 2000, effective May 30, 2001. Amended: Filed June 30, 2003, effective Dec. 30, 2003.

*Original authority: 34.100, RSMo 1945, amended 1983, 1995; 630.050, RSMo 1980, amended 1993, 1995; and 630.405, RSMo 1980, amended 1993, 1995, 2001.

9 CSR 25-2.405 RFP Evaluation and Award

PURPOSE: This rule prescribes the request for a proposal evaluation and award procedures.

(1) All proposals received by the closing time and date shall be reviewed by the department.

(2) The department shall first evaluate proposals for responsiveness to the request for a proposal (RFP) criteria, terms and conditions. The department shall not evaluate any proposal on any criteria which is not disclosed in the RFP and amendments. The department shall not recommend any non-responsive proposal to the next evaluation step.

(3) The department may negotiate with responsive offerors as described in the RFP.

(4) The department reserves the right to make multiple awards.

(5) After an award is made, the solicitation file and notice of award shall be made available to the public for inspections at any time during regular working hours.

AUTHORITY: sections 34.100 and 630.050, RSMo 2000 and 630.405, RSMo Supp. 2003.* Original rule filed Oct. 16, 1986, effective July 13, 1987. Emergency amendment filed May 15, 1990, effective May 25, 1990, expired Sept. 21, 1990. Amended: Filed Aug. 14, 1990, effective March 14, 1991. Emergency amendment filed July 7, 1992, effective July 17, 1992, expired Nov. 13, 1992. Amended: Filed July 7, 1992, effective Feb. 26, 1993. Amended: Filed June 30, 2003, effective Dec. 30, 2003.

*Original authority: 34.100, RSMo 1945, amended 1983, 1995; 630.050, RSMo 1980, amended 1993, 1995; and 630.405, RSMo 1980, amended 1993, 1995, 2001.

9 CSR 25-2.505 Protest and Appeal Procedures

PURPOSE: This rule prescribes procedures for offerors to protest the department's competitive Request for Proposal solicitation process and/or appeal a department decision regarding the award of contract(s), as a result of a competitive Request for Proposal process.

(1) An aggrieved offeror may protest the solicitation process performed by the department with a competitive Request for Proposal (RFP).

(A) The aggrieved offeror shall issue a protest of the solicitation process, in writing, to the department's contract coordinator in the Office of Administration (Mental Health). The aggrieved offeror must submit the protest with reasonable promptness to their notice of the complaint and prior to the date of contract award.

(B) Any offeror protesting a solicitation process under this rule shall include in their written protest the name and address of the offeror aggrieved, the RFP number and their complaint of the solicitation process. The offeror shall include support documentation to substantiate any claims made and specify the relief requested from the department.

(C) Upon receipt of protest the contracts coordinator shall consult with the deputy director of administration (Mental Health). Upon the finding of facts the department shall take appropriate action and issue a written response to the involved parties within ten (10) state working days of receipt of the protest. The department's written response shall be final.

(2) An aggrieved offeror may appeal a department decision regarding the award of contract(s), as a result of a competitive Request for Proposal process.

(A) The aggrieved offeror shall issue an appeal of a contract award, in writing, to the director of the division for which the services are to be purchased (directors of the Division of Mental Retardation and Developmental Disabilities, Division of Comprehensive Psychiatric Services or Division of Alcohol and Drug Abuse) within ten (10) state working days of the department's issuance of a notice of contract award, of which aggrieved.

(B) Any offeror appealing a contract award under this rule shall include in their written appeal the name and address of the offeror aggrieved, the RFP number, the name of the contract awardee and their complaint. The offeror shall state the specific grounds for the appeal and include supporting documentation.

(C) Upon receipt of an appeal the division director shall consult with the deputy director of administration (Mental Health) and shall issue a written response to the involved parties within fifteen (15) state working days of receipt of the appeal. The division director's written response shall be a decision to accept or reject the appeal.

(D) If the offeror finds the written response of the division director to be unacceptable, the offeror may issue an appeal of the decision, in writing, to the department director within ten (10) state working days after the issuance of the division director's written response.

(E) If an aggrieved offeror appeals the division director's response, the aggrieved offeror shall state the specific reasons why the response was not acceptable and why the aggrieved offeror is appealing the response to the department director.

(F) Within fifteen (15) state working days of receipt of the offeror's appeal of the division director's response, the department director shall issue a written response to the involved parties. The department director's written response shall be a decision to accept or reject the appeal. The department director's written response shall be final.

(3) At each step of the protest or appeal procedure the element of time shall be measured by date stamp or registered mail receipt for the date of receipt and U.S. mail postmark for the date of issuance.

AUTHORITY: sections 34.100 and 630.050, RSMo 2000 and 630.405, RSMo Supp. 2001.* Original rule filed Oct. 16, 1986, effective July 13, 1987. Emergency amendment filed May 15, 1990, effective May 25, 1990, expired Sept. 21, 1990. Amended: Filed Aug. 14, 1990, effective March 14, 1991. Amended: Filed Dec. 12, 2001, effective June 30, 2002.

*Original authority: 34.100, RSMo 1945, amended 1983, 1995; 630.050, RSMo 1980, amended 1993, 1995; and 630.405, RSMo 1980, amended 1993, 1995, 2001.